



Statement of reasons made under the *Freedom of Information Act 1982*

Decision and reason for decision of Nadia Vittoria, Information Access Officer,
Information Law, Legal Services, Assurance & Deregulation

Applicant: Mr Anthony Brewster

Decision date: 29 June 2015

FOI reference number: FOI 3118

Requested documents: *From April 30 2005 and ending April 30 2015:*

1. *A list of all entities that are approved to use of the word ANZAC as is required under the Protection of Word 'Anzac' Regulations 1921 (Cth);*
2. *A list of all entities that have been denied approval of the use of the word 'Anzac' under the provisions provided by the Protection of Word 'Anzac' Regulations 1921 (Cth);*
3. *A list of all entities that are approved to import goods bearing the word 'Anzac' under the Customs (Prohibited Imports) Regulations;*
4. *A list of entities that have been denied approval to import goods bearing the word 'Anzac' under the Customs (Prohibited Imports) Regulations.*

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Summary

1. I have made a decision to release the documents relevant to your request in part.

Authority to make this decision

2. I, Nadia Vittoria, Information Access Officer, Information Law, Legal Services, Assurance & Deregulation, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

Background

3. On 16 April 2015 you made a request for access to documents in the possession of the Department. Your request sought access to:
 1. A list of all entities that are approved to use of the word ANZAC as is required under the *Protection of Word 'Anzac' Regulations 1921 (Cth)*;
 2. A list of all entities that have been denied approval of the use of the word 'Anzac' under the provisions provided by the *Protection of Word 'Anzac' Regulations 1921 (Cth)*;
 3. A list of all entities that are approved to import goods bearing the word 'Anzac' under the *Customs (Prohibited Imports) Regulations*;
 4. A list of entities that have been denied approval to import goods bearing the word 'Anzac' under the *Customs (Prohibited Imports) Regulations*.
4. On 30 April 2015 I notified you of the large amount of material falling within the scope of your request. On the same date you refined the scope of your request to entities approved and denied approval in the period of 30 April 2005 to 30 April 2015.
5. On 12 May 2015 I wrote to you confirming the need to conduct a third party consultation and informed you that, as a result, the timeframe on this request would be extended by an extra 30 days. The third party consultation was undertaken in accordance with sections 27 and 27A of the FOI Act.
6. On 11 June 2015 I wrote to you requesting an additional 14 days to process your request. On 15 June 2015 you agreed to a 14 day extension.

Charges for providing access

7. I have decided not to impose a charge in relation to this request, in accordance with regulation 3(1) of the *Freedom of Information (Charges) Regulations 1982*.

Relevant documents

8. The Department has undertaken a reasonable search of its records and has identified two (2) documents relevant to your request, as set out above. I have extracted the information relevant to your request into these two documents, in accordance with section 17 of the FOI Act. The documents relevant to your request are listed at Schedule 1.
9. I have provided access to a single list of accepted applications and a single list of declined applications. The Department's record keeping under *Protection of Word 'Anzac' Regulations 1921* and the *Customs (Prohibited Imports) Regulations 1956* is amalgamated into a single record. This is done on the basis that an applicant applying to import goods bearing the word Anzac under the

Customs Regulations must also be granted a permit under the Protection of Word 'Anzac' Regulations.

Decision

10. I have made a decision to release the documents relevant to your request in part. The documents that I have chosen to grant access to in part are set out in Schedule 1, together with applicable exemption provisions. Where I have decided to grant access in part, I have provided access to an edited copy of documents, modified by deletions in accordance with section 22(2) of the FOI Act.

Reasons for decision

11. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based and the reasons for my decision to grant partial access to the documents follow.

12. I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request;
- Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions:
 - Section 11B Public interest exemption – factors
 - Section 22 Access to edited copies with exempt or irrelevant material deleted
 - Section 47F Public interest conditional exemptions--personal privacy
- Section 17 of the FOI Act which enables the Department to produce written documents from information retrieved from electronic sources and provide such documents to satisfy FOI request seeking information not otherwise contained in a written document;
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines); and
- the views of third parties consulted by the Department under sections 27 and 27A.

13. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 2.

Statement of reasons

14. I have decided to grant access to documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

Public interest conditional exemptions--personal privacy

15. Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Personal information

16. The FOI Guidelines provide that personal information means information or opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the

information or opinion. The Information Commissioner suggests that the individual's identity needs to be reasonably ascertainable by you, the applicant. The documents relevant to your request contain small amounts of personal information about third party individuals. I am satisfied that the identity of these individuals would be apparent to you from the release of these parts of the documents.

Unreasonable disclosure

17. Section 47F(2) of the FOI Act provides that an agency must have regard to the following matters in determining whether disclosure of a document would amount to an unreasonable disclosure of personal information:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources; and
 - (d) any other matters that the agency considers relevant.
18. I am satisfied that the personal information contained in the relevant documents is not well known. It is unlikely that it would have been disclosed widely by any of the individuals associated with these matters and such information is not available from publicly accessible sources. Further to this, individual names are not necessarily associated with the way in which the word 'Anzac' is used for goods, events or the naming of places or businesses. I consider that disclosure of this information would disproportionately interfere with the privacy of members of the public.
19. Consequently, I am satisfied that the disclosure of parts of the documents would be an unreasonable disclosure of personal information. Accordingly, I have decided that the document which is listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5) as set out below.

Public interest conditional exemptions--business

20. Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
21. The documents contain information concerning the business affairs of organisations and individuals. I am satisfied that disclosure of this information would, or could reasonably be expected to, adversely affect the third parties in respect of their lawful business affairs and may provide competitors of the third parties in question with a competitive advantage or disclose the nature of their dealings with

the Department. Additionally, a proportion of this information is not publically available and I consider it unreasonable to disclose such information on this basis.

22. Accordingly, I have decided that the parts of the documents which are listed as exempt in accordance with this provision in Schedule 1, meet the criteria for conditional exemption. Where a document is assessed as conditionally exempt, access must be given subject to the public interest test in accordance with section 11A(5).

Application of the public interest test

23. Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

24. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

- (a) disclosure would promote the objects of the FOI Act; and
- (b) disclosure would inform debate on a matter of public importance.

25. I also considered the following factors which do not favour disclosure:

- (a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;
- (b) disclosure could reasonably be expected to harm the interests of an individual or group of individuals;
- (c) disclosure may discourage members of the public from submitting applications under the Regulations in their capacity as individuals and they may consider there to be a risk that their personal information will be disclosed to third parties; and
- (d) disclosure would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

26. I am satisfied that no irrelevant factor has been considered, as set out in section 11B(4) of the FOI Act. I have accorded particular weight to the submissions received from the third parties objecting to disclosure of the information.

27. On balance, I consider the public interest factors against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.

Access to documents

28. The documents released to you in accordance with the FOI Act are enclosed.

Information Publication Scheme

29. On 1 May 2011, the Information Publication Scheme commenced. The Department is now required under section 11C of the Act to publish information released in response to individual requests made under the Act, except in specified circumstances. This applies to requests received on or after 1 May 2011 and as such details of your request will be published by the Department on its disclosure log, which can be accessed at:

<http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>

Your rights of review

30. If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

31. Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.
32. You can make your application for internal review in one of the following ways:

Post: Legal Services, Assurance & Deregulation, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6316
Email: foi@dva.gov.au

Information Commissioner Review

33. Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:
34. You can make your application for Information Commissioner review in one of the following ways:


Online: www.oaic.gov.au
Post: Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001
Facsimile: (02) 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street, Sydney NSW.

35. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

Contact us

36. If you wish to discuss this decision, please do not hesitate to contact me using the following details:

Post: Legal Services, Assurance & Deregulation, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6316
Email: foi@dva.gov.au



Nadia Vittoria
Information Access Officer
Information Law
Legal Services, Assurance & Deregulation

29 June 2015



Schedule of documents

Applicant: Mr Anthony Brewster

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4. *A list of entities that have been denied approval to import goods bearing the word 'Anzac' under the Customs (Prohibited Imports) Regulations.*

Doc ref	Date of document	Document description	Pages	Decision	Exemption provision
1	29 June 2015	Accepted Applications	9	Part access	ss 47F & 47G
2	29 June 2015	Declined Applications	1	Part access	ss 47F & 47G



Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);

(d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

17 Requests involving use of computers etc.

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
 - (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency; the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:

- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
- (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
 - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
 - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
 - (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;
 - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
(see section 11A).

Public interest conditional exemptions

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
 - (a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

47G Public interest conditional exemptions—business

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

